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OCT - 9 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Re: *Implementation of the Pay Telephone Reclassification and
Compensation Provisions of the Telecommunications Act of 1996
CC Docket No. 96-128 and NSD File No. L-99-34*

Dear Ms. Salas:

Enclosed please find an original and four copies of the Comments of the RBOC Payphone Coalition on Petitions for Reconsideration and Clarification in the above referenced matter. Please date-stamp and return the extra copy to the messenger.

Thank you for your assistance. If you have any questions, please do not hesitate to call me at (202) 326-7921.

Sincerely,


Aaron M. Panner

Enclosures

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

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OCT - 9 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of

Implementation of the Pay Telephone)	
Reclassification and Compensation Provisions)	CC Docket No. 96-128
of the Telecommunications Act of 1996)	
)	
RBOC/GTE/SNET Payphone Coalition)	NSD File No. L-99-34
Petition for Reconsideration)	

**COMMENTS OF THE RBOC PAYPHONE COALITION
ON PETITIONS FOR RECONSIDERATION AND CLARIFICATION**

The RBOC Payphone Coalition (the "Coalition")¹ respectfully submits these comments on the petitions for reconsideration and clarification filed in response to the Commission's *Second Order on Recon.*²

INTRODUCTION AND SUMMARY

The Coalition strongly supports the Commission's determination, in the *Second Order on Recon.*, that the first underlying facilities-based interexchange carrier ("IXC") to which a local exchange carrier ("LEC") delivers a call will be required to compensate the payphone service provider ("PSP") for the call. None of the petitions filed in this docket question that basic policy

¹ The Coalition includes BellSouth Public Communications, SBC Communications Inc., and the Verizon telephone companies.

² Second Order on Reconsideration, *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, NSD File No. L-99-34, FCC 01-109 (rel. Apr. 5, 2001).

choice. Instead, the petitions for reconsideration and clarification filed by AT&T Corp., WorldCom, Inc., and Global Crossing Telecommunications, Inc., focus on two issues. First, each carrier expresses concern about identification of completed calls carried by switch-based resellers. Second, each carrier objects to the data reporting obligations included in the order.

As to the first issue, the Commission should grant AT&T's petition for clarification and make clear that where an IXC treats all calls that it carries for which answer supervision is returned — including all calls that are routed to a reseller's switching platform — as completed calls for purposes of calculating the per-call compensation owed to PSPs, that IXC satisfies its obligations towards PSPs. The IXC's chosen method of calculating compensation on calls routed to a reseller's platform does not, however, automatically impose an obligation on resellers to reimburse the IXC for any over-inclusion of calls in the IXC's compensation payment to PSPs. For this reason, the Commission should reject WorldCom's suggestion that it modify the definition of completed call to include any call that hits a reseller's switching platform.

WorldCom's proposal would arguably create unfair distinctions between switch-based resellers and facilities-based carriers; moreover, the Commission has always treated only those calls that are answered by an end-user as completed calls. Likewise, the Commission should reject Global Crossing's proposal of adopting a surrogate for determining which calls are completed. Global Crossing has offered no evidence as to either the need for or the content of its proposed surrogate, and to adopt a surrogate without adequate evidence would be arbitrary.

Any business concerns that IXCs may harbor about resellers' ability to provide reliable information in a form that IXCs can use to track completed calls can be addressed through private contractual negotiations between IXCs and their reseller customers. Under the current

regime, facilities-based IXCs have clear and verifiable per-call compensation obligations for the calls that they carry. To the extent that those obligations reflect calls that facilities-based IXCs are carrying on behalf of their switch-based reseller customers, IXCs (both facilities-based and resellers) are free to negotiate whatever private arrangements they wish to provide for reimbursement of the facilities-based carrier. *Cf.* 47 C.F.R. § 64.1310(b).

As to the second issue, the Coalition believes that the Commission's decision to adopt the data reporting requirements set forth in the *Second Order on Recon.* was wholly justified on the record. Complaints that such reporting requirements were either adopted pursuant to improper procedures or are unduly burdensome are unjustified. At the same time, the Coalition also believes that modification and clarification of those reporting requirements may reduce alleged administrative burdens on the IXCs while preserving PSPs' ability to verify that IXCs are complying with their compensation obligations. The Coalition's proposals are set forth in detail below.

DISCUSSION

The Coalition is hopeful that the *Second Order on Recon.* will contribute to reducing the serious burden that unpaid per-call compensation obligations have imposed on the payphone industry over the last four years. Happily, no IXC has questioned the validity of the Commission's basic approach in the *Second Order on Recon.*, that is, its determination that the first facilities-based IXC to carry a payphone-originated call should bear the responsibility for compensating the PSP for that call. Instead, the petitions in this docket raise two basic issues. First, IXCs seek either reconsideration or clarification concerning which calls that are passed to facilities-based resellers may (or must) be treated as completed calls for compensation purposes.

Second, IXC's seek modification of the reporting requirements imposed by paragraph 18 of the *Second Order on Recon.*

In an effort to facilitate the Commission's resolution of these issues, members of the Coalition have participated — along with independent PSPs and other carriers, including IXC's — in industry discussions designed to promote a broader understanding of the concerns of other industry participants and to work towards a consensus concerning the nature of any potentially helpful clarifications or modifications to the compensation system established in the *Second Report and Order*. The Coalition's comments reflect lessons learned in these discussions but naturally represent the views of the Coalition alone.

I. THE COMMISSION SHOULD GRANT AT&T'S PETITION FOR CLARIFICATION, BUT IT SHOULD NEITHER MODIFY THE DEFINITION OF COMPLETED CALL NOR ADOPT A TIMING SURROGATE

Pursuant to section 64.1300(a) of the Commission's rules, the first facilities-based IXC to which a *completed* call is delivered is required to compensate the PSP for that call. In their petitions, AT&T, WorldCom, and Global Crossing all make the point that their existing tracking systems do not provide them with "accurate completed call data." WorldCom Pet. at 3. According to Global Crossing, this is because "rather than using switched services to hand off the call to the second carrier, the first IXC will transport the call to the second IXC over a dedicated facility for that carrier to handle the call through its own network." Global Crossing Pet. at 4. None of the IXC's presents any evidence, however, to suggest that such tracking systems cannot be implemented or even that such systems would be particularly costly. Despite the absence of any concrete evidence that tracking calls to completion is impracticable, the IXC's propose three possible approaches to this supposed problem. Only one — AT&T's — is

reasonable, because it does not prejudice the question whether implementation of call-tracking systems will be efficient in particular cases.

A. AT&T states that its “general practice has been to pay payphone compensation to PSPs at the Commission-established rate for all calls that complete to a switch-based reseller’s switching platform, whether or not such calls are completed to the called party.” AT&T Pet. at 2-3. AT&T asks that the Commission declare that AT&T’s practice is “consistent with the Commission’s new rule.” *Id.* at 4. The Commission should grant AT&T’s request to the following extent: if a facilities-based IXC chooses to pay PSPs for all calls that the IXC carries that are either 1) completed to an end-user or 2) delivered to a switch-based reseller’s switching platform, the IXC will have complied with its obligations under section 64.1300(a) to pay for all completed “payphone call[s].” 47 C.F.R. § 64.1300(a). That is because this method of compensation will be somewhat over-inclusive, and will therefore ensure that PSPs are fully compensated for the calls they generate. However, the Commission should also make clear that by granting AT&T’s petition, the Commission does not automatically impose an obligation on resellers to reimburse an IXC for any over-inclusion of calls in the IXC’s compensation payments to PSPs.

It is possible, as AT&T points out, that this method of compensation may be efficient for both facilities-based IXCs and their reseller customers in some instances. *See* AT&T Pet. at 3. Under the Commission’s rules, if a first-switch IXC chooses to pay a PSP only for those calls carried by switch-based resellers that are completed to end users, the IXC must provide detailed call tracking data to the PSP. Moreover, the reseller customer will have to implement systems in its network to make such tracking possible and to enable the reseller to provide data to the IXC in

a form that can be processed and shared with the PSP. It may be that, in some cases, “the administrative costs involved are likely to exceed the savings that would result if resellers actually implemented the processes necessary” to carry out these functions (*id.*); in other cases, it may be cheaper to implement those necessary systems and processes. Which course IXC and resellers choose to follow should be left to their business judgment.

B. The clarification requested by AT&T makes any other action on this issue superfluous. WorldCom proposes that the FCC modify the definition of completed call so that the definition is different for WorldCom than for its customers. Thus, WorldCom proposes that in the case of calls that WorldCom completes on its own network, a completed call is defined as one that is answered by an end user. In the case of calls that WorldCom hands off to its switch-based reseller customers, WorldCom proposes that a completed call be defined as one that is handed off to the switch-based reseller, whether or not the call is actually completed. Unlike AT&T’s proposal, WorldCom’s would arguably require reseller’s to reimburse IXCs on the basis of all call attempts, rather than leaving such matters to the private agreement of resellers and first-switch carriers.

The Commission should reject WorldCom’s proposed change. The Commission’s prior determination that “a ‘completed call’ is a call that is answered by the called party” is correct and should be reaffirmed. *First Payphone Order*,³ 11 FCC Rcd at 20573, ¶ 63. As the Commission recognized, the Commission has always defined a call that is routed over multiple networks as a single call, and there is therefore no basis for declaring that a call is completed simply because

³ Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 20541 (1996) (subsequent history omitted).

one carrier has passed the call to another carrier's network. *See id.* Moreover, using a different definition of completed call in the case of first-switch IXC and switch-based resellers arguably puts switch-based resellers at an unfair disadvantage. If a reseller is able to implement call-tracking systems that meet the Commission's requirements, and the first-switch IXC is willing and able to process that data, the Commission should not prohibit such arrangements by altering the definition of completed call.

WorldCom complains that it has "no way to verify the accuracy of the completed call data they receive," that it "will not have control over the formatting and security of the data feeds that they receive," and that processing data will cause WorldCom delay. WorldCom Pet. at 3-4. The simple answer to these complaints is that a facilities-based carrier should resolve any operational difficulties through negotiations with their switch-based reseller customers. Unlike PSPs, facilities-based IXCs necessarily have a contractual relationship with their reseller customers. Accordingly, there is no reason for the Commission to get involved with implementation of the tracking requirements imposed by the *Second Order on Recon.*, because industry participants are free to comply with their compensation and reimbursement obligations by adopting the system they consider to be most efficient.

The Commission should make clear, however, that whatever supposed difficulties call tracking may present — and WorldCom has presented no concrete evidence that there are, in fact, any difficulties⁴ — WorldCom is bound to comply with its compensation and tracking

⁴ No one claims that the technology to implement such systems is lacking. As AT&T points out, whether implementing such technology makes sense, or whether IXCs are better off paying on all calls delivered to a reseller's platform, is a matter for carriers' individual business judgment.

obligations as of the deadlines set forth in the *Second Order on Recon*. The days when WorldCom can “point the PSP to downstream SBRs to settle the dispute” (WorldCom Pet. at 3) are over. It is the obligation of the first-switch carrier, not the switch-based reseller, to compensate the PSP for every completed call. If the first-switch carrier fails to do so, then the first-switch carrier has broken the law. Likewise, if a first-switch carrier “delay[s] the payment to PSPs by at least a quarter” (*id.* at 4), the carrier will be violating its obligation under the Commission’s *Payphone Orders*. The Commission should explicitly reject any carrier’s threats of disobedience of the Commission’s rules. In a related vein, the Commission should reject WorldCom’s request for an extension of the deadline for implementation of the *Second Order on Recon*. WorldCom has presented no evidence to justify such a delay, while PSPs have an urgent need for resolution of the compensation shortfall that the Commission’s former rules have fostered.

C. Global Crossing’s suggestion that the Commission should adopt a timing surrogate should likewise be rejected. The Commission has rightly rejected the use of a timing surrogate in the past. *First Payphone Order*, 11 FCC Rcd at 20574, ¶ 63. Like WorldCom, Global Crossing has failed to present any evidence that implementation of tracking systems for calls passed to switch-based resellers would be impracticable. Moreover, Global Crossing has presented no evidence that its proposed surrogates are accurate either in general or as to any particular class of calls. In the absence of such evidence, to adopt a particular timing surrogate likely would be found arbitrary.

D. Finally, the Commission should likewise reject Global Crossing’s suggestion that the Commission bar private arrangements between PSPs and resellers whereby resellers would assume payment obligations for completed calls. There is no justification for preventing certain

carriers from adopting private arrangements to take the place of the regulatory obligations imposed by the Commission, so long as all parties' legitimate interests are taken into account.

The Commission *should* make clear, however, that, if a reseller and a PSP agree to have the reseller pay per-call compensation directly, the reseller must provide adequate data, in usable form, to the first-switch IXC to permit the first-switch IXC to exclude the reseller's calls from its payment obligation. Likewise, the Commission should make clear that, if a PSP and a reseller enter into a private arrangement, the first-switch IXC will be held harmless in the event that a dispute arises between the reseller and the PSP over implementation of the private agreement. In this way, the Commission will both preserve resellers' ability to contract around inefficient regulatory obligations and protect IXCs from any harm.

II. THE COMMISSION SHOULD ENSURE THAT IXCs REPORT ADEQUATE DATA TO PERMIT FULL VERIFICATION OF COMPENSATION PAYMENTS

All IXCs raise objections, on both procedural and substantive grounds, to the reporting obligations imposed in paragraph 18 of the *Second Order on Recon*. Those objections are without merit. At the same time, in an effort to facilitate more consensual resolution of this proceeding, the Coalition discusses possible modifications to the reporting requirements that would ease alleged administrative burdens on IXCs and yet still adequately protect PSPs' legitimate interest in verification of IXCs' payment responsibilities.

A. The procedural objections raised by AT&T and WorldCom — that they had inadequate notice of the content of the Commission's reporting requirements — is baseless. The question of reporting obligations is intimately connected to the question of which carrier or carriers should be responsible for paying compensation. Moreover, the Coalition and the APCC

made clear that inadequacies in some IXC's data reporting made it impossible for PSPs to identify the carrier actually responsible for payment of compensation for particular calls and to verify the extent of those carriers' obligations.

Accordingly, in addressing which IXC is responsible for payment of per-call compensation, the Commission necessarily had to address IXCs' reporting obligations. Moreover, those obligations build on the Common Carrier Bureau's prior rulings, which had required IXCs to identify the resellers associated with particular toll-free numbers. *See Memorandum Opinion and Order, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 13 FCC Rcd 10893, 10915-16, ¶ 38 (1998). There had been ample discussion in the docket concerning the scope of IXCs' obligations in this regard.⁵ Despite AT&T's statement to the contrary, the Commission's reporting obligations were a "logical outgrowth" of the very issues that AT&T and other IXCs commented upon in this proceeding. *National Elec. Mfrs. Ass'n v. EPA*, 99 F.3d 1170, 1172 (D.C. Cir. 1996) (internal quotation marks omitted).

B. By requiring IXCs to identify "the toll-free and access code numbers for calls that the LEC has routed to the carrier, and the volume of calls for each toll-free and access code number that each carrier has received from each of that PSP's payphones" (*Second Order on Recon.* ¶ 18), the Commission has put in place obligations that will permit PSPs to verify that IXCs are complying with their obligations under the Commission's rules. No IXC challenges the

⁵ *See, e.g.*, Letter from Michael K. Kellogg, RBOC/GTE/SNET Payphone Coalition, to Lawrence Strickling, Chief, Common Carrier Bureau, FCC, CC Docket 96-128 (filed Nov. 17, 1998).

efficacy of the Commission's rule. Instead, they argue that the rules are unduly burdensome, and that PSPs do not require such detailed information.

But no IXC has presented any concrete evidence that would support the claim that implementation of the Commission's tracking obligations would be particularly costly, particularly in relation to IXCs' per-call compensation obligations. Moreover, to the extent that the reporting requirements that the Commission has imposed entail data that PSPs do not require, IXCs should have little difficulty in securing PSPs' agreement to modify those reporting obligations through private contract. The sorry fact is that most IXCs have refused to cooperate with PSPs' efforts to obtain adequate data to confirm compensation obligations; in addition, some IXCs — including WorldCom and Global Crossing — have failed to pay the compensation they owed until found liable for violation of the Commission's rules. In light of this history of defiance, the FCC's reporting requirements — burdensome or not — are fully justified on the record.

C. Although the Commission's current reporting requirements are both procedurally and substantively justified, the Coalition has worked with other industry participants in an attempt to find a solution that would continue to protect the interests of PSPs while reducing the alleged administrative burdens on IXCs. The Coalition's proposal — which emerged from those industry discussions — is set forth below.

First of all, the Coalition believes that the Commission could relax the requirement that IXCs be required to report compensable calls by individual called number in every case. Coalition PSPs could, for example, receive data from IXCs by category of call, rather than by specific number. Accordingly, the Coalition would support a rule requiring IXCs to report the

number of call attempts and completions broken down into four categories — 1) subscriber toll-free calls; 2) pre-paid card calls; 3) 0+ and 1010XXX-0+ calls; and 4) other access code calls.

In addition, the Coalition would support rules that would acknowledge that the tracking obligations for calls sent to a switch-based reseller's platform should vary depending on the manner in which an IXC chooses to compensate PSPs for such calls. Three general types of arrangements are likely.

First, many first-switch IXCs may choose, like AT&T, to compensate PSPs for all calls that are delivered to a switch-based reseller's switching platform without tracking such calls to actual completion. As discussed above, such a method complies with the first-switch carrier's obligation to compensate PSPs for all completed calls. In that circumstance, the first-switch IXC need not identify calls sent to a reseller's switch or otherwise identify which toll-free numbers are associated with particular resellers. Instead, the IXC can include such calls as completed subscriber 800 calls in its data reporting.

Second, some first-switch IXCs and their reseller customers may choose to implement call-tracking systems to permit the first-switch IXC to determine which calls delivered to its reseller are actually completed. If an IXC is calculating its payment obligations in this manner, it must provide the PSP with adequate information concerning calls sent to individual resellers to permit the PSP to verify that IXCs are not under-reporting compensation obligations for calls completed by their reseller customers. At a minimum, in this circumstance, the IXC must identify which access code and toll-free numbers are associated with particular resellers for which such a tracking mechanism is in place. The IXC must also identify the reseller by name and address. The IXC should also be required to provide to the PSP a statement indicating, for

each reseller, how many calls the IXC sent to the reseller's switch and, how many such calls were completed to an end-user. All such reporting must be in computer-readable format. These additional reporting requirements thus make clear that an IXC and its reseller customer may agree to track calls to completion only if the reseller has an accurate system for tracking calls that can generate the data needed to generate the required reports for the PSP. And it is the first-switch IXC — not the switch-based reseller — that remains liable to the PSP if those systems prove inadequate or inaccurate.

Third, a reseller may enter into an arrangement directly with a PSP to pay compensation, as long as the reseller provides the first-switch IXC with adequate data to permit the IXC to exclude the reseller's calls from its payment obligations. *See supra* at 8-9. Because the reseller may assume this obligation only with the explicit contractual agreement of the PSP, reporting obligations in this circumstance may be left to private parties' agreement. At the same time, in light of past difficulties and to avert unnecessary disputes, the Commission should advise PSPs and resellers that such private agreements are inadvisable unless the reseller is able to document its ability accurately to track compensable calls and the reseller is able to provide to both the PSP and the first-switch IXC documentation commensurate with that required under the Commission's rules governing first-switch IXCs' obligations.

CONCLUSION

The Commission's *Second Order on Recon.* will, one hopes, reduce significantly the shortfalls in per-call compensation payments that characterized the prior per-call compensation regime. The Commission's reporting requirements are procedurally and substantively justified. At the same time, by modifying and clarifying its data reporting requirements as described above, the Commission will assist the industry in implementing an open, fair, and verifiable per-call compensation regime with a minimum of disputes and future Commission involvement.

Respectfully submitted,



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October 9, 2001

CERTIFICATE OF SERVICE

I, Tara M. Brooks, hereby certify that on this 9th day of October 2001, one copy of the **Comments of the RBOC Payphone Coalition on Petitions for Reconsideration and Clarification** was served upon the parties listed below by first-class U.S. Mail, postage pre-paid to the following parties:

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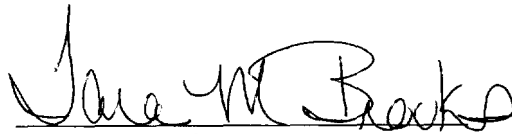
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